

Exhibit A

Oliver Hemmers

In re: Infinity Capital Management, Inc.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	
)	CASE NO.:
)	21-14486-abl
INFINITY CAPITAL MANAGEMENT,)	
INC.; dba INFINITY HEALTH)	Chapter 7
CONNECTIONS,)	
)	Volume II
Debtor.)	Pages 163 - 219
_____)	

CONTINUED REMOTE FRCP 2004 EXAMINATION
OF OLIVER HEMMERS

Taken on November 18, 2021

By a Stenographic Certified Court Reporter

At 9:05 a.m.

Location of Witness: Las Vegas, Nevada

Via Zoom Web-Based Videoconferencing

Reported by: Janet C. Trimmer,
NV CCR 864, RPR, CRR
Location of Reporter: Las Vegas, Nevada
Job No. 47158

1 the road, the record is there?

2 MR. NAPOLI: Yeah, but I would note that I
3 think this line of questioning and testimony is going
4 to bear on this proposed sale.

5 MR. LARSEN: Understood. Like I said, I
6 don't want to have to object every time we go that
7 direction.

8 MR. NAPOLI: No.

9 MR. LARSEN: So, I mean, if you prefer that I
10 do it question by question, that's fine too.

11 MR. NAPOLI: No, Bart, I prefer that you
12 didn't. I understand what you are saying. In all
13 candor, I don't agree with you on that and I think --

14 MR. LARSEN: Understood.

15 MR. NAPOLI: -- you kicked the door open
16 pretty wide in your direct.

17 MR. LARSEN: Yes, and I get that. Like I
18 said, I want to preserve the record here so that if it
19 comes up down the road, the objection is preserved.

20 MR. NAPOLI: I get it, and we may be doing
21 this again in our case, and that's fine.

22 MR. LARSEN: Okay. All right. Thank you.

23 BY MR. NAPOLI:

24 Q. Infinity's internal records denote which
25 receivables belong to Infinity and which belong to

1 Tecumseh; correct?

2 A. Yes.

3 Q. So somebody reviewing Infinity's records
4 would be able to tell the difference between the two
5 categories?

6 A. Yes.

7 Q. How would they do that? Where would they
8 look?

9 A. In the database.

10 Q. Which field would show that?

11 A. The field for a thing that's called "Fund."

12 Q. I'm going to show you a couple of
13 spreadsheets, one of which I think you saw on the
14 first day, one of which is similar to one you saw, and
15 again, because there are Excel documents, they are not
16 going into the Dropbox.

17 Okay. The first one I'm showing you is a
18 spreadsheet called "TIFDumpWithIncomeFinal." Do you
19 see that? Is it visible on your screen?

20 A. Yes, it is.

21 Q. And if I understand your testimony from last
22 time, you created this spreadsheet for purposes of the
23 bankruptcy. Is that correct?

24 A. That's correct.

25 Q. And you did so using information from

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1 Infinity's case management database?

2 A. Yes.

3 Q. And this spreadsheet shows the receivables
4 that were owned by Tecumseh that Infinity serviced; is
5 that correct?

6 A. Yes.

7 Q. Let me show you a second spreadsheet. This
8 spreadsheet is called
9 "ESDVerifiedHASOverlapDumpWithIncome." Is that
10 visible on your screen, sir?

11 A. Yes.

12 Q. Now, this one -- and you can see column A
13 which I've highlighted. Is this the fund field you
14 were --

15 A. Yes.

16 Q. Okay. So the fund -- so HAS -- and this
17 refers to HA Select; is that correct?

18 A. Yes.

19 Q. And let me just sort it real quick. And TIF
20 refers to what?

21 A. That's a Tecumseh fund.

22 Q. So the TIF denotes the receivables that were
23 being serviced by Infinity; correct?

24 A. Yes.

25 Q. And HAS marks the receivables that Infinity

1 owned but which served as collateral for HA Select's
2 loan; correct?

3 A. Yes.

4 Q. All right. So I'm going to define a term
5 with you that we can use for the next several
6 questions. I'm going to define the term "Tecumseh
7 receivables" to be the receivables listed on the TIF
8 dump spreadsheet that I showed you first, and that's
9 marked TIF on the overlap spreadsheet. Does that make
10 sense?

11 A. Yes.

12 Q. And if I say "Tecumseh receivables" you'll
13 know what I'm talking about?

14 A. Yes.

15 (Previously designated Exhibit 1 for
16 identification in Volume I referred to as follows:)

17 BY MR. NAPOLI:

18 Q. I'm now going to show you the schedule that
19 was part of your deposition or the first day of your
20 deposition, and this, I believe, was Exhibit 1 as
21 marked by Mr. Larsen. Do you see that, sir?

22 A. Yes.

23 Q. I want to direct your attention to page 4 of
24 49 which I have up on your screen. Do you see items
25 10 and 11 under part 3?

1 A. Yes.o

2 Q. Okay. This refers to accounts receivable in
3 the amount of 5.78 million; is that correct?

4 A. Yes.

5 Q. It says "face amount" but really, as I
6 recall, that's cost; is that correct?

7 A. That's the purchase cost.

8 Q. And remind me what purchase cost is.

9 A. It's the amount paid to the medical providers
10 that originally owned those receivables.

11 Q. It does not -- therefore, it does not include
12 the 20 percent or so that represents Infinity's
13 overhead?

14 A. That's correct.

15 Q. Does this 5.78 million include any of what we
16 have defined as the Tecumseh receivables?

17 A. No, it does not.

18 Q. Why not?

19 A. Because they are on a different schedule.

20 Q. Are the Tecumseh -- go ahead. I interrupted
21 you, sir. Go ahead and finish your answer.

22 A. It's distinguished in the database that who
23 paid for which receivables, and the Tecumseh
24 receivables were not paid by the forum Infinity and,
25 therefore, they don't show up in our accounting.

1 Q. Is that because, in your view, Infinity does
2 not own an interest in those receivables?

3 A. That's correct.

4 (Previously designated Exhibit 17 for
5 identification in Volume I referred to as follows:)

6 BY MR. NAPOLI:

7 Q. All right. I want to move now to what was
8 marked as Exhibit 17 to -- on the first day of your
9 deposition, which is the Tecumseh/Infinity
10 sub-advisory agreement. This is Exhibit 17, the
11 Tecumseh/Infinity sub-advisory agreement. Is that
12 visible on your screen, sir?

13 A. Yes.

14 Q. I want to direct your attention to exhibit A.

15 A. Yeah.

16 Q. Does exhibit A set forth the particular
17 services that Infinity was to provide to Tecumseh?

18 A. Yes.

19 Q. All right. I'd like to go through this. So
20 in this agreement "sub-advisor" refers to Infinity; is
21 that correct?

22 A. Yes.

23 Q. And "company" refers to Tecumseh?

24 A. Yes.

25 Q. So under item 1(a), Tecumseh or Infinity is

1 do to take care of these receivables on Tecumseh's
2 behalf?

3 A. Yes.

4 Q. Can you describe to me generally what
5 servicing a medical litigation receivable entails?

6 A. Yes.

7 Q. Would you?

8 A. We go into the detail. The case status needs
9 to be followed up on every -- usually every 60 days in
10 the beginning until the attorneys identify that they
11 are getting closer to a settlement, and then the
12 follow-up will be every 30 days on the status of the
13 case, and at that point it gets closer to settling.

14 It also includes the settlement amount and
15 the time frame of payment, and then usually within the
16 last, you know, months of the case there might be a
17 weekly follow-up on case status, on settlement status
18 in this case, and payment arrangements. So it's a
19 process, it's a constant contact and communication on
20 the case with the attorney.

21 Q. Now, if you have a receivable with a face
22 value of \$1,000, you are not necessarily going to
23 collect the full \$1,000; correct?

24 A. Correct.

25 Q. Why not?

1 A. Because the case is dependent on the outcome
2 of the settlement either between the attorney and the
3 insurance company or, if it goes to litigation, there
4 might be a jury verdict that determines the outcome of
5 the case.

6 And in most cases the awarded amounts are not
7 at the level that would allow a full payment of all
8 medical costs at face value, and then usually there is
9 a negotiation, attorneys then negotiate with all the
10 creditors how much they are willing to take in order
11 to settle the case.

12 Q. And doing that servicing requires some skill
13 and experience; correct?

14 A. Yes.

15 Q. And to a certain extent it requires
16 familiarity with the plaintiffs' lawyers?

17 A. Yes.

18 Q. What happens if receivables are not serviced?

19 A. Well, let me broadly assume the attorneys
20 still have to -- that work for the clients, they don't
21 work for us, so they still have to make sure that
22 their clients' case gets settled and, and in order to
23 do so without the input of the lienholder, the voice
24 of the lienholder is not heard in the settlement
25 arrangements.

1 And what can happen is that the payout for
2 those lienholders might come out shorter than in an
3 actual settlement negotiation where you actually talk
4 to the attorney directly and negotiate a more
5 favorable settlement outcome for the lienholder.

6 Q. If no one is servicing the receivable, how
7 would someone know if a settlement is even being
8 negotiated or finalized?

9 A. Nobody knows that because the whole process
10 depends on communication. As I mentioned before, once
11 a settlement is getting closer, you have more frequent
12 communication, almost on a weekly basis, with the
13 law firm on the case status and settlement amounts.
14 And without communicating with any of those law firms,
15 there is no knowledge what's going on.

16 Q. If -- isn't there a significant risk that you
17 will recover nothing on the receivable if the owner
18 doesn't know about the settlement?

19 A. Well, it is a general risk that you lose out
20 substantially, but in the end it depends on the
21 law firm, the relationship that the company has with
22 those law firms. If there is some kind of good
23 relationship, the law firms would not kind of send you
24 nothing; they would just send you what they think is
25 fair; right?

1 But, you know, in other cases they might not
2 send you anything, they might send it to -- I don't
3 know. They might just hold the funds or start an
4 interplead. You know, there are different ways of
5 kind of going about that.

6 But none of those cases would be kind of
7 favorable for anybody who wants to collect these
8 amounts.

9 Q. Or they could just send the money to the
10 client too; right?

11 A. That's another option.

12 Q. Because that would make the client happy,
13 that would make the lawyer happy; correct?

14 A. It would -- the lawyer would tell the client
15 you have to deal with the medical bills now, yes, the
16 money; right. So that --

17 Q. Right and --

18 A. -- can happen.

19 Q. -- in the situation we find ourselves in
20 right now, though, there is no -- Infinity is out of
21 business; correct?

22 A. That's correct.

23 Q. So there is no longer any relationship
24 between the lawyer and the company; correct?

25 A. That's correct.

1 Q. The lawyers don't have any particular reason
2 to want to keep, for example, the bankruptcy trustee
3 happy; correct?

4 A. I don't know. In general I don't think so.
5 That's the first time I've been in this situation. So
6 probably they wouldn't even get far with contacting
7 the trustee, right, I would think.

8 Q. And if the trustee -- even if they contact
9 the trustee and the trustee tells them I can't talk to
10 you about this, what's the effect?

11 MR. LARSEN: Objection. Calls for
12 speculation.

13 BY MR. NAPOLI:

14 Q. Based on you being in the industry for
15 30 years, what do you understand to be the effect if
16 calls to lawyers are unanswered?

17 A. They will not consider you for payment in
18 general. There's always exceptions. I don't say
19 every lawyer is that way. But, yeah, I think you
20 would lose a lot in those cases.

21 Q. Speaking generally, the servicing aspect of
22 these receivables is an important aspect; is that
23 correct?

24 A. That's one of the biggest things of the
25 receivable funding, is its servicing.

1 Q. The owner's ability to realize on the
2 receivables is impacted by the servicing; is that
3 correct?

4 A. Yes.

5 Q. Better servicing will lead to better
6 outcomes?

7 A. Yes.

8 Q. Or servicing will lead to worse servicing --
9 I'm sorry. Worse servicing will lead to worse
10 outcomes; correct?

11 A. Yes.

12 Q. And no servicing will lead to even worse
13 outcomes; is that correct?

14 A. Yes.

15 Q. Going back to the sub-advisory agreement
16 generally, the purpose of this agreement was for
17 Infinity to assist Tecumseh in purchasing receivables
18 directly from the medical service providers; is that
19 correct?

20 A. Yes.

21 Q. The dollars to purchase these receivables
22 were to come from Tecumseh and not Infinity; is that
23 correct?

24 A. Yes.

25 Q. Certainly the dollars to pay for this were

1 not to come from HA Select; is that correct?

2 A. Yes.

3 Q. Infinity was not to acquire any interest in
4 the receivable; correct?

5 A. Yes.

6 Q. And Infinity was not supposed to be part of
7 the chain of title; correct?

8 A. Yes.

9 Q. Infinity was not buying or selling, it was
10 brokering; is that fair?

11 A. Yes.

12 Q. So Infinity acquired no interest in the
13 receivable?

14 A. Yes.

15 Q. It merely serviced the receivables on
16 Tecumseh's behalf?

17 A. Yes.

18 Q. And all of the dollars were to go directly to
19 Tecumseh; is that correct?

20 A. Yes.

21 Q. And that's because it was Tecumseh's money,
22 not Infinity's money?

23 A. Yes.

24 Q. All right. On the first day of your
25 deposition, do you recall discussing a purchase of

1 A. Yes.

2 Q. And then what would happen?

3 A. Just to make sure, before the Tecumseh deal
4 or after? Is that related to the Tecumseh purchases
5 or HAS purchases?

6 Q. I'm talking about the purchases that Tecumseh
7 made through the sub-advisory agreement. If I'm not
8 being clear, let me know.

9 A. Well, once the receivables were identified,
10 verified through due diligence, the receivables was
11 paid for by Tecumseh.

12 Q. All right. Let's talk a little bit about how
13 that worked.

14 So when you, Infinity, had a receivable or a
15 batch of receivables that it believed Tecumseh wanted
16 to purchase, how did it notify Tecumseh?

17 A. Well, we identified those on a list and said
18 those are the receivables that we identified, here is
19 the necessary document, was the due diligence.
20 Tecumseh verified those through another sub-advisor,
21 and when they said, yeah, all these receivable check
22 out, they have, you know, all the documents needed and
23 everything, then we would issue either check payments
24 for Tecumseh to the providers or ACH or wire payments.

25 Q. When you say "we would issue," the funds came

1 out of Tecumseh's Bank of America account; is that
2 correct?

3 A. Yes, Tecumseh was paying from their account.

4 Q. And none of the dollars to purchase these
5 receivables came from an Infinity bank account;
6 correct?

7 A. Correct.

8 Q. And the funds in the Tecumseh BofA account,
9 those were Tecumseh's funds?

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. Infinity had no interest in any of the funds
14 in Tecumseh's BofA account; correct?

15 A. Yes, correct.

16 Q. So none of the dollars to purchase these
17 receivables flowed through Infinity's bank account;
18 correct?

19 A. Yes.

20 Q. It was a direct payment from Tecumseh to the
21 medical service provider?

22 A. Yes.

23 Q. And did this happen monthly? weekly? daily?

24 A. You know, I would say maybe on a weekly basis
25 rather than monthly.

1 Q. And to your knowledge, no calls are being
2 made or received on these receivables; is that
3 correct?

4 A. That's correct.

5 Q. All right. Prior to the bankruptcy, going
6 back to the Tecumseh receivables, Infinity did all the
7 collecting and the servicing for those receivables;
8 correct?

9 A. Correct.

10 Q. And any dollar -- what happened to the money
11 that was received from the plaintiffs' lawyers? Where
12 did it go?

13 A. For the last -- after filing or before?

14 Q. No, no, sir. I'm asking you prior to the
15 bankruptcy.

16 A. Prior. It was deposited into either the Bank
17 of America account or, if there was overlap receivable
18 that had assets from Tecumseh and HAS, they were
19 deposited into an account at First Savings Bank, and
20 on a monthly basis the Tecumseh portion of those
21 settlement amounts was then sent back to Infinity to
22 be then sent to the Bank of America account for
23 Tecumseh.

24 Q. So that I understand, can you tell me what an
25 overlap account was?

1 A. When an account had medical treatments for a
2 patient where the medical bills were paid by the HAS
3 fund, one of the draws, and by Tecumseh. For example,
4 you can have a patient who has maybe 50 different
5 medical bills, so some of those bills were paid by
6 either of those funds, and we had to then determine,
7 okay, how much was the settlement, how much was paid
8 from each fund and how much of the settlement would go
9 to each of those funders. And we provided reports,
10 detailed reports on that to HAS so they could verify,
11 and we also then provided similar reports to Tecumseh,
12 and we made sure that those -- the settlement check
13 got split up correctly.

14 But we needed to deposit that check
15 somewhere; right? So -- and since we kind of
16 historically started depositing those settlement
17 checks into the First Savings Bank, we continued to do
18 so for the overlap checks, and then HAS approved the
19 wires to send the overlap funds that are Tecumseh's
20 portion back to us and then we sent it to the Bank of
21 America account.

22 Q. When you say HAS approved the amount to be
23 sent out of the -- well, actually, let me back up.

24 The First Savings account you are referring
25 to, that's an Infinity account, yes?

1 A. Yes.

2 Q. And Infinity's intent in putting the overlap
3 money in there was not to exercise any ownership
4 interest over Tecumseh's share of the money; is that
5 correct?

6 A. That's correct.

7 Q. It simply put those in the account as a way
8 to -- because it received a single check, yes?

9 A. Yes.

10 Q. And in order to divide up the money between
11 the two groups, it had to deposit it somewhere, yes?

12 A. Yes.

13 Q. And you elected to deposit it in this First
14 Savings account?

15 A. Yes.

16 Q. All right. You said that HAS approved the
17 split. How did that happen? I mean, what was the
18 process?

19 A. The process was that we provided weekly
20 reports to HAS with the breakdown of everything
21 collected that involves their collateral, and with the
22 overlap it also included details on the receivables
23 that were non-HAS collateral.

24 And that was then agreed upon between HAS and
25 Infinity that those numbers are correct, and the First

1 Savings bank account had a requirement that in order
2 to send funds out from there through wire transfer
3 needed the approval from HAS as well.

4 So usually we sent on a monthly basis three
5 wire payments. One was HAS collateral cost, one was
6 HAS interest, and one was for the other funds that
7 included Tecumseh.

8 Q. Was all of the communication back and forth
9 between Infinity and HAS regarding splitting the
10 proceeds of the overlap receivables via e-mail?

11 A. Yes.

12 Q. Who at Infinity would send those e-mails?

13 A. I would.

14 Q. So they would be in your sent box on your
15 e-mail?

16 A. Yes.

17 Q. Did -- from a recordkeeping perspective, was
18 it Infinity's practice to keep all of the sent e-mails
19 in each individual's sent e-mail box?

20 A. Yes.

21 Q. In other words, there was not a repository
22 of -- a general repository of e-mail communications?

23 A. That's correct.

24 Q. So if I want to -- so if I want to see all
25 the e-mails, I've got to look at everybody's e-mail